

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Mary Merrill Anderson,

Complainant,  
vs.

PROBABLE CAUSE  
ORDER

Hauser for 8<sup>th</sup> Ward Volunteer  
Committee,

Respondent.

The above-entitled matter came on for a probable cause hearing as provided by Minn. Stat. § 211B.34, before Administrative Law Judge Beverly Jones Heydinger on October 11, 2005, to consider a complaint filed by Mary Merrill Anderson on October 5, 2005.

Maria A. Michlin, Attorney at Law, 845 Jefferson Street, Anoka, MN 55303, participated by telephone on behalf of Mary Merrill Anderson ("Complainant").

Alan W. Weinblatt, Weinblatt & Gaylord, PLC, Suite 300, Kellogg Square, 111 East Kellogg Boulevard, St. Paul, MN 55101, participated by telephone on behalf of Hauser for 8<sup>th</sup> Ward Volunteer Committee ("Respondent").

Based upon the record and all of the proceedings in this matter, including the Memorandum incorporated herein, the Administrative Law Judge finds that there is probable cause to believe that the Respondent violated Minnesota Statute § 211B.06 by preparing and disseminating false campaign material.

**ORDER**

**IT IS HEREBY ORDERED:**

1. That there is probable cause to believe that Respondent violated Minnesota Statute § 211B.06.

2. That this matter is referred to the Chief Administrative Law Judge for assignment to a panel of three administrative law judges pursuant to Minnesota Statute § 211B.35.

Dated: October 14, 2005

/s/ Beverly Jones Heydinger  
BEVERLY JONES HEYDINGER  
Administrative Law Judge

## MEMORANDUM

The Complaint alleges that during the weekend before the September 13, 2005, primary election, the "Hauser for 8<sup>th</sup> Ward Volunteer Committee" distributed campaign material in the form of a 5.5" x 8.5" card. On the front side of the card were pictures of Marie Hauser, Mary Merrill Anderson, and Tom Nordyke.<sup>[1]</sup> Above the pictures of the candidates' faces was the following statement:

VOTE TUESDAY SEPTEMBER 13<sup>TH</sup>  
for Your 8<sup>th</sup> Ward Team

On the back side of the card was the same statement running horizontally across the top, with smaller pictures of the candidates arranged underneath in a vertical row. Alongside the pictures were boxes with check marks resembling a ballot. Dan Froehlich, another candidate for Minneapolis Park Board, was also listed although not pictured.

Ms. Anderson maintains that the Hauser Committee violated Minnesota Statute § 211B.06, by falsely stating in this campaign material that Ms. Anderson and Ms. Hauser were part of the same "8<sup>th</sup> Ward team." Ms. Anderson argues that the phrase "8<sup>th</sup> Ward team" falsely implies that she and Ms. Hauser were on the same side working together. Ms. Anderson states that she never gave the Hauser Committee permission to use her name or picture, never worked with Ms. Hauser as part of a "team," and never supported Ms. Hauser's candidacy. In fact, Ms. Anderson publicly endorsed the campaign of Jeff Hayden for 8<sup>th</sup> Ward Council Member. Ms. Anderson further alleges that the false campaign material was designed to help Ms. Hauser garner enough votes in the primary election to move forward to the general election.

The Respondent argues that the Complaint fails to state any violation of Minn. Stat. § 211B.06, as the flyer complained of truthfully states that Ms. Hauser supported Ms. Anderson's election to the Minneapolis Park Board. The Respondent maintains that in order to establish a violation of section 211B.06, the Complainant must show that: (1) the campaign material contained a false statement of fact; (2) the false statement of fact was defamatory; and (3) the false statement of fact was designed for the purpose of doing harm to a candidate. According to the Respondent, none of these elements have been established by the Complainant. In addition, the Respondent contends that this complaint is barred by the doctrine of *res judicata* based on Administrative Law Judge Barbara Neilson's dismissal of Ms. Anderson's prior complaint (OAH File No. 11-6326-16855) alleging that the same campaign flyer at issue in this matter violated Minn. Stat. § 211B.02.

Taking the last argument first, the Administrative Law Judge concludes that this matter is not barred by the doctrine of *res judicata*, which is designed to prevent the relitigation of causes of action already determined in a prior action.<sup>[2]</sup> There are three components of *res judicata*: (1) a final judgment on the merits; (2) a second suit involving the same cause of action; and (3) identical parties or

parties in privity.<sup>[3]</sup> Under *res judicata* a final judgment on the merits bars a party's second suit for the same claim.<sup>[4]</sup> While it is true that the same parties are involved in both campaign complaints, there has been no final judgment on the merits of the issues involved in this case. Rather, Administrative Law Judge Neilson dismissed Ms. Anderson's earlier complaint for failing to identify a prima facie violation of Minn. Stat. § 211B.02 (false claim of support or endorsement). Judge Neilson's dismissal of Ms. Anderson's claim of false endorsement does not preclude consideration of a claim of false campaign material under Minn. Stat. § 211B.06.

Moreover, *res judicata* is an equitable doctrine that must be applied in light of the facts of each individual case.<sup>[5]</sup> This matter involves a campaign complaint, which is handled in an expedited administrative process pursuant to Minn. Stat. §§ 211B.31 to 211B.38. The majority of persons filing campaign complaints do so without the assistance of legal counsel. In addition, these complaints are not contested cases within the meaning of Minnesota Statutes Chapter 14<sup>[6]</sup> and there are no specific rules governing the amendment of campaign complaints to add additional claims. The Administrative Law Judge finds that it is reasonable to view Ms. Anderson's prompt filing of a second complaint as akin to an amendment to her original complaint. To hold that Ms. Anderson's second complaint is barred by the doctrine of *res judicata* would work an injustice against her. For all of these reasons, the Administrative Law Judge concludes that this complaint alleging a violation of Minn. Stat. § 211B.06 is not barred by the doctrine of *res judicata*.

Minn. Stat. § 211B.06, subd. 1, provides, in part:

A person is guilty of a gross misdemeanor who intentionally participates in the preparation, dissemination ... of ... campaign material with respect to the personal or political character or acts of a candidate ... that is designed or tends to elect ... [or] promote ... a candidate for election to a public office ..., that is false, and that the person knows is false or communicates to others with reckless disregard of whether it is false.

Respondent argued at the probable cause hearing that the alleged false statement must be defamatory as well as false in order to violate Minn. Stat. § 211B.06. In *Graves v. Meland*,<sup>[7]</sup> the Minnesota Supreme Court, in considering the predecessor to Minn. Stat. § 211B.06, stated that the statute "clearly relates to defamatory publications and not merely self-laudation or dated laudatory comments."<sup>[8]</sup> In that case, a non-endorsed DFL candidate put dated laudatory comments from Humphrey and Mondale on his campaign material.

Nowhere in the language of Minn. Stat. § 211B.06 does it state that false campaign material must be defamatory in order to violate the statute. In fact, the OAH has on at least two occasions found non-defamatory false statements violative of Minn. Stat. § 211B.06. In *Flug v. Gustafson*,<sup>[9]</sup> for example, the panel of Administrative Law Judges held that the Respondent's false statement that he was a "former law enforcement officer" was designed to promote his candidacy

and did violate Minn. Stat. § 211B.06, where the Respondent knew the statement was false. Likewise, in *Bauman v. House Republican Campaign Committee*,<sup>[10]</sup> the panel found a violation of Minn. Stat. § 211B.06 where campaign material urged voters to “Re-elect” candidates who were not incumbents.

The purpose of a probable cause hearing is to determine whether there are sufficient facts in the record to believe that a violation of law has occurred as alleged in the complaint.<sup>[11]</sup> The material facts in this case are not in dispute. The Administrative Law Judge finds that there is sufficient probable cause to believe a violation of Minn. Stat. § 211B.06 occurred and concludes that the arguments of law presented by Complainant are better addressed to the panel of three Administrative Law Judges. Therefore, this matter will be referred to the Chief Administrative Law Judge for assignment to a panel and scheduling of an evidentiary hearing.

B.J.H.

---

<sup>[1]</sup> Like the Complainant, Tom Nordyke is an at large candidate for the Minneapolis Parks and Recreation Board.

<sup>[2]</sup> *Demers v. City of Minneapolis*, 486 N.W.2d 828, 830 (Minn. App. 1992), *citing*, *Beutz v. A.O. Smith Harvestore Prods., Inc.*, 431 N.W.2d 528, 531 (Minn. 1988).

<sup>[3]</sup> 486 N.W.2d at 830.

<sup>[4]</sup> *Kaiser v. Northern States Power Co.*, 353 N.W.2d 899 (Minn. 1984); *Surf and Sand, Inc. v. Gardebring*, 457 N.W.2d 782 (Minn. App. 1990).

<sup>[5]</sup> *G.A.W., III v. D.M.W.*, 596 N.W.2d 284, 288 (Minn. App. 1999), *citing* *R.W. v. T.F.*, 528 N.W.2d 869, 872 n. 3 (Minn. 1995).

<sup>[6]</sup> Minn. Stat. § 211B.36, subd.5.

<sup>[7]</sup> 264 N.W.2d 401 (Minn. 1978).

<sup>[8]</sup> 264 N.W.2d at 404 (considering Minn. Stat. § 210A.04).

<sup>[9]</sup> OAH File No. 4-6312-16361-CV (Order dated Feb. 8, 2005).

<sup>[10]</sup> OAH File No. 7-0320-16264-CV (Order dated Nov. 19, 2004).

<sup>[11]</sup> Minn. Stat. § 211B.34, subd. 2.